The Perlman-Rocque Company (North)[1] ***and*** **Richard A. Williams, Jr., Attorney for and on behalf of Warehouse, Drivers and Helpers Union Local No. 359, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America *and* Warehouse, Drivers and Helpers Union Local No. 359, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.** Cases 18-CA-6541 and 18-CA-6611

July 21, 1981

DECISION AND ORDER

On March 6, 1981, Administrative Law Judge George Norman issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,[2] and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.

We agree with the Administrative Law Judge that Respondent violated Section 8(a)(3) and (1) of the National Labor Relations Act, as amended, by discharging employee Kerry Kjeseth[3] because of his union activities. However, we do not agree with the Administrative Law Judge's conclusion that Respondent violated Section 8(a)(1) of the Act by entering into a contract with and attempting to force its employees to join Local Union No. 710, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein Local 710, although Local 710 did not represent a majority of Respondent's employees in the appropriate unit.

Review of the record herein indicates that on January 29, 1980, Warehouse, Drivers and Helpers Union Local No. 359, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein Local 359, filed charges with the Board in Case 18-CA-6541 alleging that Respondent, by the above-mentioned conduct, violated Section 8(a)(2) and (1) of the National Labor Relations Act, as amended.[4] On or about March 18, 1980, by stipulation and agreement with Respondent, Local 359 withdrew these charges. Neither Local 359 nor the General Counsel has, at any time since this withdrawal, requested that we find these violations.

Accordingly, inasmuch as the charges have been withdrawn, we find that Respondent did not violate Section 8(a)(1) of the Act as found by the Administrative Law Judge. Additionally, we disavow the Administrative Law Judge's statement in his "Discussion and Conclusions" that Respondent's conduct would have been found to violate Section 8(a)(2) of the Act but for Local 359's withdrawal of the charge.[5]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, The Perlman-Rocque Company (North), Fridley, Minnesota, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(a):

"(a) Discouraging membership in any labor organization by discharging its employees or in any other manner discriminating against them with regard to their hire or tenure of employment or any other term or condition of employment."

2. Substitute the attached notice for that of the Administative Law Judge.

[1] On April 6, 1981, Respondent filed with the Board a motion to correct the caption of the case and all other references herein to reflect the proper spelling of the name of Respondent. We hereby grant this motion and make the requested corrections.

[2] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[3] Member Jenkins would compute interest on Kjeseth's backpay in the manner set forth in his partial dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980).

[4] On February 11, 1980, Local 359 amended these charges to include allegations that Respondent violated Sec. 8(a)(3) and (1) of the Act by discharging Kjeseth.

On March 20, 1980, Local 359 filed a charge against Respondent in Case 18-CA-6611, alleging that Respondent committed violations of Sec. 8(a)(1) of the Act by threatening employees with a loss of pension benefits if they voted in favor of the Union. On April 25, 1980, the Regional Director for Region 18 consolidated this charge with the charges in Case 18-CA-6541. In his Decision, the Administrative Law Judge dismissed the allegations of Case 18-CA-6611. The General Counsel did not file exceptions to this dismissal.

[5] Respondent excepts to the Administrative Law Judge's ruling at the hearing admitting evidence offered by the General Counsel which tends to show that Respondent actively supported Local 710, contending that such evidence is irrelevant in light of Local 359's withdrawal of the 8(a)(2) and (1) charges against it. The Administrative Law Judge, however, found this evidence to be relevant to the issue of Respondent's motivation for discharging Kjeseth. We agree with the Administrative Law Judge's reasoning and his ruling based thereon. Accordingly, we find Respondent's exception to be without merit.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT terminate an employee because of his union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by the National Labor Relations Act, as amended.

WE WILL offer Kerry Kjeseth immediate and full reinstatement to his former position of employment or, if that job no longer exists, to a substantially equivalent position of employment without the loss of his seniority or any other rights and privileges.

WE WILL make whole Kerry Kjeseth for his losses, with appropriate interest thereon, which have resulted from his termination.

THE PERLMAN-ROCQUE COMPANY (NORTH)

DECISION

STATEMENT OF THE CASE

GEORGE NORMAN, Administrative Law Judge: The hearing in this case was held in Minneapolis, Minnesota, on September 29 and 30, 1980.[1] The order consolidating cases and consolidating complaint and notice of hearing was issued by the Regional Director for Region 18 of the National Labor Relations Board (herein the Board), on behalf of the General Counsel of the Board, pursuant to Section 10(b) of the National Labor Relations Act, as amended (herein the Act), and Section 102.15 of the Board's Rules and Regulations, Series 8, as amended. The order is based on a charge filed by Warehouse, Drivers and Helpers Union Local No. 359, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (herein Local 359 or the Union).

The charge in Case 8-CA-6541 was filed by the Union on January 29, the amended charge in Case 18-CA-6541 was filed by the Union on February 11, and the charge in Case 18-CA-6611 was filed by the Union on March 20. The charge in Case 18-CA-6541 alleges that The Perlman-Rocque Company (North) (herein Respondent or the Company) committed certain unfair labor practices in violation of Section 8(a)(1) and (2) of the Act. The amended charge in Case 18-CA-6541 further alleges that Respondent committed violations of Section 8(a)(3) of the Act.[2] The charge in Case 18-CA-6611 alleges that Respondent committed violations of Section 8(a)(1) of the Act.

In effect, what remains to be decided herein is whether Respondent discharged employee Kerry Kjeseth in violation of Section 8(a)(1) and (3) of the Act, and whether Respondent interfered with, restrained, and coerced employees in the exercise of their rights guaranteed in Section 7 of the Act by threatening employees with loss of benefits if they voted to be represented by the Union.

Respondent denied the substantive allegations of the complaint.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to argue orally. The General Counsel and Respondent filed post-hearing briefs.

Upon the entire record, including my consideration of the briefs and careful observation of the witnesses and their demeanor, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, a Minnesota corporation with an office and place of business in Fridley, Minnesota, has been engaged in the wholesale distribution of restaurant supplies, including food. During the 12-month period ending September 31, 1979, Respondent purchased and received at its Fridley, Minnesota, facility products, goods, and materials valued in excess of $50,000 directly from points outside the State of Minnesota. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Warehouse, Drivers and Helpers Union Local No. 359, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background Facts*

Respondent, a subsidiary of Havi Corporation, is engaged exclusively in the distribution of food, paper, and other products to McDonald's restaurants. It started its operations in 1977, and its present location is in Fridley, Minnesota.

The Company's primary functions are carried out by its transportation and distribution center departments. The transportation department handles the trucking operations for delivery of the Company's products, and employs its own drivers. The distribution center department performs the functions of receiving, order selecting, and trailer loading the products in and about that department's facility in Fridley. The Company first opened its own distribution center department in Fridley for full operation on December 29, 1979. Shortly before opening that facility Respondent hired the distribution center employees to operate it. Kerry Kjeseth, the allegedly discri-

[1] All events herein occurred in 1980 unless otherwise indicated.

[2] On or about March 18, the Union withdrew that portion of its unfair labor practice charge in Case 18-CA-6541 alleging violations of Sec. 8(a)(1) and (2).

minatorily discharged employee, was among the first group of 12 distribution center employees hired effective December 12, 1979.

Walter Wheaton was the Company's general manager and directed its overall daily operations. Thomas Pagois was the distribution center manager, and was immediately responsible to Wheaton for its operation and the performance of its employees. Two supervisors, Norman Peterson and Richard Bechum, performed firstline supervisory responsibilities under Pagois' direction. Andrew Bourke, the director of operations for the parent Havi Corporation, performed advisory assistance and services to management. However, he was not a direct line supervisor of the Company's operations.

At the time the Company started hiring it entered into a collective-bargaining agreement covering newly hired employees with Teamsters Local 710 (herein Local 710). Local 710 represented the Company's drivers in Fridley and the drivers and center employees of its sister corporation, The Perlman-Rocque Company in Lemont, Illinois. Employees were given copies of the contract between Respondent and Local 710 during January 1980 and were asked to sign Local 710 authorization and insurance cards.

On January 14, Supervisor Norman Peterson called Kjeseth into the office and asked him to sign for a Local 710 contract. Kjeseth signed, but wrote next to his signature, "Signature not binding to any contract." That contract was between Respondent and Teamsters Local 710 In it Respondent recognized Local 710 as its employees' bargaining agent, and the contract contained wage rates, benefits, and conditions of employment. Former employee David Hunt affirmed that he, too, was given a copy of the Local 710 contract and that he signed for it upon receiving it from Andrew Bourke, the director of operations of Havi Corporation. Kjeseth testified that he believed that Peterson distributed the Local 710 contract to all the employees and that all had to sign. Moreover, Kjeseth testified that he had never met with, spoken to, or been in any form of contact with any representative of Teamsters Local 710 prior to receiving the contract from Peterson. Bourke conceded that Respondent had signed the Local 710 contract before the operations opened.

On or about January 12, a few days before Kjeseth received the Local 710 contract, he was called into the office. Upon arriving, General Manager Wheaton and Distribution Center Manager Pagois handed him enrollment and insurance cards for Local 710. They asked him to sign both cards but Kjeseth refused. Hunt testified that he signed both cards at Bourke's request at the same time that Bourke handed him the Local 710 contract. In addition, employee Timothy Roppe was also asked to sign a Teamsters Local 710 authorization card by Wheaton in early January. Roppe testified that he filled out and signed the card as requested. Employee David Anderson testified that he was asked to sign an authorization card by Bourke and Wheaton in January. Anderson declined, saying that he had not had time to look at the contract, but when his 30-day review conference occurred he did sign an authorization card fearing that he would lose his job if he did not. Anderson testified that on another occasion, after Wheaton asked him to sign an authorization card and before his 30-day review, Bourke told him to sign a card or Bourke would make it difficult for him or fire him. In his testimony Bourke acknowledged discussing with Anderson the signing of a Local 710 authorization card, but denied telling Anderson he had to sign such a card. He further testified that he pointed out the union-security clause in the contract to Anderson, but did not explain to him what it meant.

B. *The Organizational Campaign on Behalf of Teamsters Local 359*

While Respondent was organizing on behalf of Teamsters Local 710, its employees were organizing on behalf of Teamsters Local 359. Employee Bob Varhol initiated the effort on behalf of Local 359. He asked Kjeseth and Roppe to sign cards authorizing Local 359 as their bargaining agent. Employee Frank Atkins denied any active involvement in the Local 359 organizing effort but stated that Varhol was distributing Local 359 authorization cards. Kjeseth testified that both Atkins and Varhol asked him not to sign Local 710 cards.[3] On January 17, upon learning that both Varhol and Atkins were promoted to leadpersons, Kjeseth asked to meet with Pagois and Wheaton. Kjeseth also requested that Pagois and Wheaton have available at the meeting his employment application. The meeting occurred in Wheaton's office. Kjeseth accused Pagois and Wheaton of appointing Varhol and Atkins leadmen so that both would quit trying to encourage employee support of Local 359. Kjeseth asked why Varhol and Atkins had been selected when he had written on the back of his application that he wished to be rewarded for hard work. Pagois responded that Kjeseth could not be leadman because of his student status and "too-emotional" reactions to situations. Pagois denied Kjeseth's accusations, testifying that his impression was that Kjeseth emphasized too vehemently his personal ambitions. Bourke and Pagois testified concerning Atkins' and Varhol's qualifications for the job but made no reference to the timing of the promotions.

After Varhol and Atkins became leadpersons, Kjeseth took up and continued Local 359's organizational drive. He distributed authorization cards for Local 359, and on January 19 held a meeting at his home, at which several employees and two Local 359 agents were in attendance. Neither Frank Atkins nor Varhol attended that meeting. Employee Roppe's testimony confirmed Kjeseth's activities on behalf of Local 359.

Pagois testified that he was not aware of Local 359's interest until Respondent received the petition on January 16 and that the Company was not aware of which employees had signed Local 359 cards or were active in its support. With respect to the latter, I do not credit

[3] On January 15, Local 359 filed a petition for representation of the Company's distribution center employees. An election pursuant to that petition was scheduled for April 3. Local 359, however, voluntarily withdrew its petition on April 2 for reasons unrelated to the instant charges. Local 710 withdrew from its representation of the distribution center employees in the first part of February as a result of an internal Teamsters resolution of the competing jurisdictional interests of the two Unions in favor of Local 359.

Pagois' testimony. I find it difficult to believe that in a unit of only eight employees Respondent was not aware of the organizational drive on behalf of Local 359 or which employees were active or signed cards. *Florida Cities Water Company*, 247 NLRB 755 (1980); *Syracuse Dy-Dee Diaper Service*, 251 NLRB 963 (1980).

C. *The Events Leading to Kjeseth's Discharge*

On January 28, Peterson and Pagois met with Kjeseth to review his job performance. The meeting began with a very critical review by Peterson and Pagois of Kjeseth's work. They told Kjeseth that he had a bad attitude and it was affecting his job performance. Kjeseth responded that, if the union "garbage" cleared up, his attitude "couldn't help but get better." Peterson asked Kjeseth what he did not like about the Local 710 contract. Kjeseth responded that he did not like certain management-rights provisions and the low pay scale. Kjeseth testified that Peterson's reply was, "Would you give somebody $50 to mow your lawn?" Peterson denied stating the latter. Kjeseth then suggested that they let the Local 710 matter remain between him and Local 710 and that it not be allowed to affect the relationship between him, Pagois, and Wheaton. Kjeseth also said that he liked working for Respondent and that he did not believe his relationship with Local 359 or Local 710 was affecting his work performance. Kjeseth then stated that if he was being given a choice of whether to sign for Local 710 or be fired, he might as well be fired.[4] Peterson and Pagois testified concerning the meeting that at the beginning of it Pagois explained the purpose of the review and Peterson went through the categories of the written review and the ratings. Peterson said that he told Kjeseth that he had a personality problem but that he did not give Kjeseth any specific examples, except one, during the meeting.

On January 29, at or about 11:20 p.m., 10 minutes before the end of the shift, leadman Atkins told Kjeseth that he would have to work beyond his normal 8 hours and assigned him a truck to load. Kjeseth went out to load the truck but was unable to find Anderson, who was supposed to assist him in the loading. Kjeseth then went to the office where he found Atkins and Anderson, and he asked Anderson whether he was going to help load the truck. Atkins responded, stating, "Forget it, go help John McQuade clean up pallets until 11:30 p.m." Anderson confirmed that part of Kjeseth's testimony, stating that Kjeseth walked into the office on January 29, shortly after 11:30 p.m., and asked Anderson whether he was going to help him load the truck and, just as Atkins and Kjeseth were walking out the door, Atkins said, "Forget it, pick up the pallets until 11:30 p.m. and go home!"

Leadman Atkins testified that he told Kjeseth to pick up the pallets, check with Peterson, and go home. Atkins' testimony corroborated that of Kjeseth and Anderson in that they were just outside the doorway to the office when he gave Kjeseth those instructions.[5] Kjeseth picked up the pallets and left without checking with Peterson or signing out that night.

Supervisor Peterson recommended that Kjeseth be discharged based on his observation of Kjeseth leaving at 11:45 p.m. on January 29 after he had told Kjeseth that he would have to work overtime. Peterson testified that at or about 11:30 p.m. he instructed Kjeseth to work overtime. Kjeseth denied receiving any such instructions from Peterson and Respondent's own internal memorandum and its letter of discharge to Kjeseth appeared to contradict Peterson's testimony. According to those documents, Kjeseth was discharged because (1) leadman Atkins instructed Kjeseth to work overtime but at 11:45 p.m. Peterson observed Kjeseth leaving the facility; (2) Kjeseth did not inform the leadman that he was leaving; and (3) Kjeseth failed to sign out before leaving. Neither document indicates that Kjeseth failed to work overtime as instructed by Peterson.[6] There is also much testimony in the record indicating that employees frequently either forgot to sign out, signed out for one another, or were signed out by their supervisors. Kjeseth testified that he occasionally forgot to sign out and that he was never reprimanded for his failure to sign out prior to January 29. Nor does the record contain any disciplinary action taken against any employee for such neglect. Roppe testified that he had forgotten to sign in or out and that he assumed the supervisor corrected his omission; and that he has never been reprimanded for his failure to sign in or out. Supervisor Pagois admitted that employees had failed to sign out on occasion without repercussions.

I find that on January 29 when Kjeseth left at about 11:45 p.m. he did so with the permission of leadperson Atkins, as Atkins himself admitted, and that Kjeseth reasonably relied upon Atkins' instructions to leave without the necessity of checking with Peterson before doing so.

Inasmuch as Respondent's stated reasons for discharging Kjeseth did not include his poor work and attitude, and in view of the paucity of testimony concerning any efforts by Respondent to attempt to improve Kjeseth's performance and attitude except on one occasion when he was told to rearrange the materials on a truck that he had loaded improperly, I do not consider Kjeseth's attitude or performance relevant to Respondent's reasons for discharging him.

[4] Pagois conceded that Kjeseth may have made such a statement, but denied threatening him, as he felt that was between Local 710 and Kjeseth.

[5] Employee Timothy Roppe's testimony varies with that of Atkins, Anderson, and Kjeseth with respect to where Atkins gave Kjeseth the instructions. Roppe's testimony places the location of that conversation a good distance from the office area. Moreover, his testimony regarding checking with Peterson before leaving corroborates the testimony of Atkins. I credit Kjeseth and Anderson and not Atkins and Roppe. Accordingly, I find that Atkins did not tell Kjeseth to check with Peterson before going home. Moreover, there is testimony in the record indicating that leadpersons at times released employees, who leave without any further checking with Peterson or, indeed, signing out upon departure.

[6] Peterson authored the internal memorandum recommending discharge. I agree with the General Counsel that, if Kjeseth in fact failed to follow Peterson's instructions, Peterson would have included that in the memorandum. Peterson testified in a hesitant, confused, and contradictory manner. I do not credit him.

D. *The Alleged Threat of Loss of Benefits*

In the middle of March, Douglas Polscek, director of finance of the Havi Corporation, met with distribution center employees in the employees' break room. At that meeting, Polscek gave a prepared speech which in part reads as follows:

> Who is in the plan now? All non-union employees, including you and Mr. Perlman and Mr. Rocque. Together we are all members of the Havi Corporation Profit Sharing Plan. You are not required to contribute any amount of your salary. This is a fully paid company benefit. Under the 710 contract you had pension benefits. When the Teamsters walked away, they took their pension with them. The Company went to work on this exposure to you and, as soon as it was able, included you in profit sharing, not as of the date the Teamsters walked away, but back to your individual start date.

After delivery of the prepared speech the meeting was opened to questions from the employees. Employee Hunt asked whether the employees would still have profit sharing if employees voted the Union in. Polscek replied that it was only for nonunion employees and, as stated further in his testimony, "As best as I can recall, what I responded was that I did not know, but at this time [the] profit sharing plan was for non-union employees of the Havi Corporation and its subsidiaries and that the Union had their own pension plan." Later Polscek changed his response and stated that at the meeting he said he did not know at that time, but the plan covered all nonunion employees of the Havi Corporation.

Pagois testified that he told the employees that the Internal Revenue Service allowed either a union benefit plan or a company benefit plan but not both. Employee Roppe testified that he recalled Hunt's question and that Polscek responded by stating that the plan was only for nonunion employees. On cross-examination, however, Roppe acknowledged that Polscek gave a lengthier answer to Hunt's question but asserted that he did not recall what else Polscek said. Employee Sylvester testified that his general understanding from all the discussions between management and the employees was that, if he came under a union pension plan, he no longer would be in the Company's profit-sharing plan.

On April 2, the Company held a voluntary meeting for all of its employees covered by the profit-sharing plan. Polscek testified that he distributed the individual profit-sharing statements and a summary description of the profit-sharing plan to the employees at that meeting. The definition of eligible employees stated in the summary description is as follows:

> All employees of the Company are eligible for participation provided they are not [covered by] a collective bargaining agreement, under the terms of which the Company is required to contribute to a pension benefit plan for the benefit of those employees.

According to Pagois, employee Hunt again asked whether or not employees would keep the profit-sharing plan if they voted for the Union. Pagois testified that Polscek responded that he was not sure, but he knew that the Union had its own pension plan. Pagois testified that he again explained that the Internal Revenue Service allowed only a union or a company benefit plan but not both.

The question to be decided is whether Respondent, through Polscek on March 13, threatened its employees with a loss of benefits if they voted in favor of union representation. I conclude, in all the circumstances, that Polscek's answer constituted an objective statement of fact and thus was protected speech. His statement that the plan was only for nonunion employees was an accurate statement concerning what employees the plan covered at that time. *N.L.R.B.* v. *Gissel Packing Co., Inc.*, 395 U.S. 575, 618 (1969). I conclude that the statement in the prepared text, taken in its context, was a factual and lawful presentation. *Domino of California, Inc.*, 205 NLRB 1083 (1973); *The Orchard Corporation of America*, 170 NLRB 1297 (1968).

E. *Discussion and Conclusions*

The General Counsel has proven by a preponderance of the evidence that Respondent discharged employee Kerry Kjeseth because he joined, supported, or assisted Local 359 and engaged in concerted activity for the purpose of collective bargaining or other mutual aid or protection and in order to discourage employees from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection as alleged in the complaint.

As previously indicated Respondent was aware of Kjeseth's activities on behalf of Local 359 and that he was strongly opposed to Local 710, favored and aided by Respondent. Respondent's conduct with respect to entering into the contract with Local 710 without its future employees' knowledge or consent and indeed even before it had a full complement of employees at the facility in question, and its attempt to force Kjeseth and other employees to join Local 710, would have been found to be a violation of Section 8(a)(2) of the Act but for the withdrawal of that charge with the approval of the Regional Director. However, that conduct also constitutes interference with and restraint and coercion of employees in the exercise of their rights guaranteed in Section 7 of the Act and is a violation of Section 8(a)(1) as alleged in the complaint. Respondent, through its supervisors, had openly demonstrated displeasure with Kjeseth because of his opposition to Local 710 and support of Local 359. Moreover, I suspect, as Kjeseth charged, that Respondent promoted Varhol and Atkins to the positions of leadpersons in order to remove the leader and a supporter, respectfully, from the organizational drive on behalf of Local 359 and thus hoped to kill that drive.

I am convinced that the reasons given by Respondent for the termination of Kjeseth are pretextual. There is no evidence that Respondent, in the past, held any employee to account for not checking with Peterson before leaving a work shift or signing out. On the other hand,

there is much evidence that many employees left the plant after being released only by their leadmen without checking with Peterson. Others who failed to sign in or out were not reprimanded or otherwise punished. Kjeseth's discharge, without any previous warning for the violation he was accused of, is an example of an employer's singling out an employee for discharge at a time when that employee was active in soliciting support for a union (Local 359) in an obvious attempt to kill a union organizational drive.

By its acts and conduct described above Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, Kjeseth and other employees in the exercise of their rights guaranteed in Section 7 of the Act and thereby has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act. In addition, by discharging Kjeseth, Respondent has discriminated, and is discriminating, in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization. Respondent thereby has been engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

IV. THE REMEDY

Having found that Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act, I shall recommend to the Board that Respondent be ordered to cease and desist therefrom and to take certain affirmative action to effectuate the policies of the Act. Such affirmative action will include an offer of immediate reinstatement of Kerry Kjeseth, to his former or, if his former job no longer exists, to a substantially equivalent job, without loss of his seniority or other rights and privileges. I shall also recommend that Respondent make him whole for his losses which have resulted from Respondent's termination of him. Backpay, together with interest on such backpay amounts, will be computed in accordance with the Board's decision in *F. W. Woolworth Company*, 90 NLRB 289 (1950); *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962), and *Florida Steel Corporation*, 231 NLRB 651 (1977).

On the basis of the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[7]

The Respondent, The Perlman-Rocque Company (North), Fridley, Minnesota, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act.

(b) In any like or related manner interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed them by the Act.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

(a) Offer Kerry Kjeseth immediate and full reinstatement to his former position of employment or, if that job no longer exists, to a substantially equivalent position of employment, without the loss of his seniority or any other rights and privileges.

(b) Make whole Kerry Kjeseth for his losses, with appropriate interest thereon, which have resulted from his termination by Respondent. Such backpay and interest are to be computed as set forth in "The Remedy" section of this Decision.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Fridley, Minnesota, facility copies of the attached notice marked "Appendix."[8] Copies of said notice, on forms provided by the Regional Director for Region 18, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Resonent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 18, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that all allegations of the complaint not specifically found to be violations herein are hereby dismissed.

---

[7] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[8] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."